Compiler's notes. This section was formerly compiled as § 67-5212 and was amended and redesignated as § 67-5248 by § 33 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 513 P.2d 627 (1973).

ANALYSIS

Conclusion of law.
Final decisions.
Fitness of lawyers.
Modifying conditional use permits.
Notice.
Requirements.

Conclusion of Law.

A determination by the department of law enforcement that a driver "refused to take a chemical test of his breath and blood to determine the alcoholic content of his blood" was a conclusion of law and not a finding of fact and the determination being unsupported by findings of fact will be set aside. Mills v. Holliday, 94 Idaho 17, 480 P.2d 611 (1971).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and thus they were not final decisions and did not trigger the limitation period provided for in subsection (b) of § 67-5215. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Fitness of Lawyers.

The procedure to be used in character and fitness determinations of lawyers is not governed by this section since this section does not apply to the State Bar Board of Commissioners because they are a part of the judicial rather than the executive branch. Dexter v. Idaho State Bd. of Comm'rs, 116 Idaho 790, 780 P.2d 112 (1989).

Modifying Conditional Use Permits.

Given the fact that counties have been granted the power to grant conditional use permits, coupled with the need for flexibility in land use planning and the lack of a prohibition on when conditions may be changed, counties have the authority to grant new conditional use permits which modify existing permits. Chambers v. Kootenai County Bd. of Comm'rs, 125 Idaho 115, 867 P.2d 989 (1994).

There is no basis in the statutory scheme for requiring proof of changed circumstances before a modification to an existing conditional use permit may be ordered. Chambers v. Kootenai County Bd. of Comm'rs, 125 Idaho 115, 867 P.2d 989 (1994).

Notice.

Where there was no indication or certificate in the record that a speed letter mailed to plaintiff's counsel was in fact mailed or served, the uncertainty of the notice given requires that the notice be held defective and inadequate to start the running of the appeal time. Cortez v. Owyhee County, 117 Idaho 1034, 793 P.2d 707 (1990).

Requirements.

A party is entitled to a final decision containing findings of fact and conclusions of law before seeking judicial review, and where a transcript did not contain either a final decision or the required findings of fact and conclusions of law the district court erred in finding that one commissioner's motion to deny medical indigency assistance, made at the conclusion of a hearing regarding an application for such assistance and upon which no vote was taken, constituted notice of the commissioner's decision, and the district court also erred by dismissing the appeal as untimely. Cortez v. Owyhee County, 117 Idaho 1034, 793 P.2d 707 (1990).

67-5249. Agency record. — (1) An agency shall maintain an official record of each contested case under this chapter for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law.

(2) The record shall include:

(a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;

(b) evidence received or considered;

(c) a statement of matters officially noticed;

(d) offers of proof and objections and rulings thereon;

(e) the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;

(f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and

(g) any recommended order, preliminary order, final order, or order on reconsideration.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in contested cases under this chapter or for judicial review thereof. [I.C., § 67-5249, as added by 1992, ch. 263, § 34, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5275.

67-5250. Indexing of precedential agency orders — Indexing of agency guidance documents. — (1) Unless otherwise prohibited by any provision of law, each agency shall index all written final orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. The orders shall be indexed by name and subject.

A written final order may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

(2) Unless otherwise prohibited by any provision of law, each agency shall index by subject all agency guidance documents. The index and the guidance documents shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. As used in this section, "agency guidance" means all written documents, other than rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" shall include memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons. The indexing of a guidance document does not give that document the force and effect of law or other precedential authority. [1965, ch. 273, § 2, p. 701; am. 1980, ch. 204, § 1, p. 468; am. and redesig. 1992, ch. 263, § 35, p. 783; am. 1993, ch. 216, § 108, p. 587; am. 1995, ch. 270, § 3, p. 868.]

Compiler's notes. This section was formerly compiled as § 67-5202 and was amended and redesignated as § 67-5250 by § 35 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 107 and 109 of S.L. 1993, ch. 216 are compiled as §§ 67-5241 and 67-5252, respectively.

Sections 2 and 4 of S.L. 1995, ch. 270 are compiled as §§ 67-5230 and 67-5272, respectively.

ANALYSIS

Availability for public inspection.
Public utilities commission.

Availability for Public Inspection.

The rules and regulations of an agency must be properly published and made available for public inspection before the doctrine of exhaustion of administrative remedies becomes applicable; therefore trial court could not rule as a matter of law on motion to

dismiss that appellants had not complied with agency regulations and exhausted its administrative remedy in view of factual issue regarding whether or not the agency's regulations had been published. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

To satisfy the requirement that an agency ruling must be made available for public inspection in order to be given full force and effect, an agency must file in its central office a certified copy of each rule adopted by it as required by I.C. § 67-5204 and must "publish" all effective rules adopted by it as required by I.C. § 67-5205. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

In satisfying its duty to publish its rules, an administrative agency must at least furnish state, district and county law libraries with complete sets of pertinent agency rules and regulations; if it fails to do so its rules and regulations are without force and effect. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

Public Utilities Commission.

Pursuant to this section and § 61-501, the public utilities commission may issue rules providing for procedures to be used in assuring compliance with the requirement for full and adequate prefiling of applications. Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n, 98 Idaho 718, 571 P.2d 1119 (1977).

67-5251. Evidence — Official notice. — (1) The presiding officer may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.

(2) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interests of any party.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(4) Official notice may be taken of:

(a) any facts that could be judicially noticed in the courts of this state; and

(b) generally recognized technical or scientific facts within the agency's specialized knowledge.

Parties shall be notified of the specific facts or material noticed and the source thereof, including any staff memoranda and data. Notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material noticed. Parties must be afforded a timely and meaningful opportunity to contest and rebut the facts or material so noticed. When the presiding officer proposes to notice staff memoranda or reports, a responsible staff member shall be made available for cross-examination if any party so requests.

(5) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. [1965, ch. 273, § 10, p. 701; am. and redesig. 1992, ch. 263, § 36, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5210 and was amended and redesignated as § 67-5251 by § 36 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985); Idaho State Ins. Fund v. Hunnicutt, 110 Idaho 257, 715 P.2d 927 (1985); Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

ANALYSIS

Evidence.
Exhibits.
Failure to object.

Hearsay.
Judicial notice.
Medical indigency.
Official notice.
Oral testimony judicially cognizable.
Testimony.

Evidence.

The pharmacist's conviction for possession of drug paraphernalia, which was a ground for discipline under subdivisions (1)(c)3 and (1)(f) of § 54-1726, was not subject to collateral attack in an administrative agency action, and the judgment of conviction for possession of drug paraphernalia was admissible under this section. Brown v. Idaho State Bd. of Pharmacy, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

Exhibits.

An unemployment compensation claimant was not prejudiced by the admission of exhibits, where there was absolutely no indication that the appeals examiner or the Industrial Commission relied to any extent on the exhibits, but to the contrary, the Commission relied exclusively on the claimant's statements made at the hearings on the record. Guillard v. Department of Emp., 100 Idaho 647, 603 P.2d 981 (1979).

Failure to Object.

When the claimant did not object when certain exhibits were introduced into the record by the appeals examiner, thereafter the referee and the Industrial Commission were required to include such exhibits as part of the record of the proceedings before the Commission. Guillard v. Department of Emp., 100 Idaho 647, 603 P.2d 981 (1979).

Hearsay.

The liberality as to the admission of evidence allows hearsay evidence to be admitted in hearings before the Industrial Commission at the discretion of the hearing officer. Hoyt v. Morrison-Knudsen Co., 100 Idaho 659, 603 P.2d 993 (1979).

Judicial Notice.

Under subdivision (4) of this section, a county commission was entitled to take judicial notice of its own county ordinances dealing with planning and zoning, and district court erred in concluding otherwise. Hubbard v. Canyon County Comm'rs, 106 Idaho 436, 680 P.2d 537 (1984).

The examiner did not err in taking judicial notice of the defendants' beer and liquor licenses where the Idaho Department of Law Enforcement is the agency which issued the license numbers to the defendants, the defendants' record in this case contained a copy of the defendants' licenses and the defendants presented no evidence to dispute that they were the holders of the two licenses. State, Dep't of Law Enforcement v. Engberg, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

The fact that the proposed decision and order on the company's application for a water permit mentioned the post hearing creation of a ground water unit did not taint the opinion, because creation of the unit was a cognizable fact which the Department of Water Resources was entitled to take notice of under subsection (4) of this section, and the proposed decision and order provided the company with notice that the existence of the unit was included in the department's deliberations, and the company made no objection or request for an additional hearing, pursuant to § 42-1701A(3), to meet the new information concerning the unit. Collins Bros. Corp. v. Dunn, 114 Idaho 600, 759 P.2d 891 (1988).

Medical Indigency.

An applicant for medical assistance bears the burden of proving medical indigency. Intermountain Health Care, Inc. v. Board of County Comm'rs, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

Official Notice.

Where the public utilities commission took into consideration historical development of electrical rate structuring and made its considerations in light of current political, economic and environmental realities, it did not contravene § 67-5209 and this section as to matters which may be officially noticed in a proceeding. Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 175, 627 P.2d 804 (1981).

Oral Testimony Judicially Cognizable.

Where two cost of service studies were subject of oral testimony but not admitted into evidence, the public utilities commission had them available for consideration since they were judicially cognizable under this section. Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 175, 627 P.2d 804 (1981).

Testimony.

The blanket requirement of the county commissioners, for presentation of "expert" testimony in determining medical indigency, the necessity for medical treatment, and the reasonableness of the hospital bills, is not necessarily correct; the type of testimony warranted can only be determined on consideration of the facts in each case. IHC Hosps. v. Board of Comm'rs, 108 Idaho 136, 697 P.2d 1150, overruled on other grounds sub nom. Intermountain Health Care, Inc. v. Board of County Comm'rs, 108 Idaho 757, 702 P.2d 795 (1985).

Opinions of Attorney General. This act applies to contested cases; 18 month perma-

nency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 USC 675(5), do not fall within the scope of "contested cases" as defined in the Administrative Procedure Act. OAG 88-9.

Collateral References. Determination by board on its own knowledge, without expert evidence, in proceeding for revocation of license of physician. 6 A.L.R.2d 675.

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel. 18 A.L.R.2d 571.

Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group. 19 A.L.R.2d 400.

Privilege applicable to judicial proceedings as extending to administrative proceedings. 45 A.L.R.2d 1296.

Admissibility in administrative proceedings of surveys or polls of public or consumer's opinion, recognition, preference, or the like. 76 A.L.R.2d 633.

Comment note on hearsay evidence in proceedings before state administrative agencies. 36 A.L.R.3d 12.

67-5252. Presiding officer — Disqualification. — (1) Except as provided in subsection (4) of this section, any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

(a) within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or

(b) promptly upon discovering facts establishing grounds for disqualification, whichever is later.

Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting designation of a presiding officer.

(3) A person whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination.

(4) Where disqualification of the agency head or a member of the agency head would result in an inability to decide a contested case, the actions of the agency head shall be treated as a conflict of interest under the provisions of section 59-704, Idaho Code.

(5) Where a decision is required to be rendered within fourteen (14) weeks of the date of a request for a hearing by state or federal statutes or rules and regulations, no party shall have the right to a disqualification without cause. [I.C., § 67-5252, as added by 1992, ch. 263, § 37, p. 783; am. 1993, ch. 216, § 109, p. 587.]

Compiler's notes. Sections 108 and 110 of S.L. 1993, ch. 216 are compiled as §§ 67-5250 and 67-5273, respectively.

67-5253. Ex parte communications. — Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding

officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication. [1965, ch. 273, § 13, p. 701; am. and redesig. 1992, ch. 263, § 38, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5213 and was amended and redesignated as § 67-5253 by § 38 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

67-5254. Agency action against licensees. — (1) An agency shall not revoke, suspend, modify, annul, withdraw or amend a license, or refuse to renew a license of a continuing nature when the licensee has made timely and sufficient application for renewal, unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

(2) When a licensee has made timely and sufficient application for the renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by a reviewing court.

(3) This section does not preclude an agency from:

(a) taking immediate action to protect the public interest in accordance with section 67-5247, Idaho Code; or

(b) adopting rules, otherwise within the scope of its authority, pertaining to a class of licensees, including rules affecting the existing licenses of a class of licensees. [1965, ch. 273, § 14, p. 701; am. and redesig. 1992, ch. 263, § 39, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5214 and was amended and redesignated as § 67-5254 by § 39 of S.L. 1992, ch. 263, effective July 1, 1993.

ANALYSIS

Due process.
Suspension of license.
—Effect of bankruptcy stay.
Suspension prior to hearing.

Due Process.

Department of Insurance had both subject matter and personal jurisdiction in proceeding; because the issue of the effect of the lack of a warning letter was not raised until appeal, after insurance agent had received notice of the Department's allegations, presented evidence and received a ruling, there was no merit to insurance agent's due process assertion. Knight v. Department of Ins., 124 Idaho 645, 862 P.2d 337 (Ct. App. 1993).

Suspension of License.

—Effect of Bankruptcy Stay.

The exception under 11 U.S.C. 362(b)(4) to the automatic stay granted with regard to bankruptcy proceedings operated in favor of the Department of Insurance in a matter involving the suspension and revocation of an insurance agent's license where the agent filed for bankruptcy prior to the suspension of his license and prior to the institution of proceedings to revoke same; where the Department of Insurance contended that it was seeking the revocation of agent's insurance license based solely on his alleged fraudulent activities, the court was willing to accept the State's representations, however, if it were to appear that the purpose of the administrative proceedings was to collect premiums allegedly withheld by agent for his own use to compensate the agent's victims, such activities would likely exceed the scope of the § 362(b)(4) exception. In re Fitch, 123 Bankr. 61 (Bankr. D. Idaho 1990).

Suspension Prior to Hearing.

Where substantial evidence existed that an emergency situation existed at a licensed shelter home, the hearing officer's decision to suspend the license prior to the scheduled hearings required by § 39-3303 and this section did not deny the shelter's owners procedural due process, since, even if the suspension effectively terminated the owners' provisional license and adversely affected their economic interests, such interests were of lesser importance than the safety and welfare of the residents. Van Orden v. State, Dep't of Health & Welfare, 102 Idaho 663, 637 P.2d 1159 (1981).

67-5255. Declaratory rulings by agencies. — (1) Any person may petition an agency for a declaratory ruling as to the applicability of any order issued by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action. [I.C., § 67-5255, as added by 1992, ch. 263, § 40, p. 783.]

Compiler's notes. Section 41 of S.L. 1992, ch. 263 contained repeals and § 42 is compiled as § 67-5270.

67-5256 — 67-5269. [Reserved.]

67-5270. Right of review. — (1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

(3) A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code. [I.C., § 67-5270, as added by 1992, ch. 263, § 42, p. 783.]

Compiler's notes. Section 41 of S.L. 1992, ch. 263 contained repeals and § 40 is compiled as § 67-5255.

Sec. to sec. ref. Sections 67-5270 through 67-5279 are referred to in § 41-227.

Inadequate Findings of Fact.

Where the Department of Health's findings of fact were inadequate to support its decision that nursing home exceeded Medicaid percentile caps was due to inefficient operation the matter was remanded to the Department of Health with instructions that the Department should make specific findings of fact and conclusions of law with respect to the questions of whether nursing home was efficiently operated and to what extent its costs above the percentile cap were justified based solely upon the present evidentiary record, without the taking of any new or additional evidence. Idaho City Nursing Home v. Department of Health, 124 Idaho 116, 856 P.2d 1283 (1993) decision under former § 67-5215.

DECISIONS UNDER PRIOR LAW

ANALYSIS

In general.
Agency.
Appeals.
Application.

Conclusions of law.
Contested case.
Denial of application for medical indigency assistance.
scharge of employee.
Discretion of commission.
Erroneous advice provided by agency.
Evidence.
Examination of record.
Exhaustion of administrative remedies.
Final decisions.
Findings.
Method of review.
Record of agency proceedings.
Remand.
Remand to administrative board.
Reversal.
Right to judicial appeal.
Scope of review.
Standard of review.
Subdivision plat applicant.
Trial de novo.
Zoning.
—Aggrieved person.

In General.

An appeal, which was not filed in either the county in which a hearing was held or in the county in which a final decision was made, could not be perfected. Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976).

Agency.

Subsection (3) of § 23-1015 did not make the county and "agency" for the purposes of former laws so as to grant judicial review of a decision to a person other than an applicant. Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976).

Under former law the Board of Corrections was not an "agency" within the meaning of the Administrative Procedures Act, and the judicial review provision did not apply to it. Therefore, there was no appeal to the district court from decisions of the Board of Corrections. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

When the Commission of Pardons and Parole was exercising the powers and duties delegated to it by the Board of Corrections in matters involving parole and probation, it was exercising powers granted to the Board under Idaho Const., Art. 10 § 5. Therefore, it was not an "agency" within the meaning of the Administrative Procedures Act, and former law inapplicable to a parole decision of the Commission of Pardons and Parole. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

Appeals.

Given the close alignment of the Commission of Pardons and Parole with the Idaho Board of Corrections, the fact that the Commission was exercising the parole power delegated to it by the Board, and the fact that the legislature found it necessary to specifically give authority to the Commission to promulgate regulations pursuant to the Administrative Procedures Act in U 20-223(a), the Supreme Court of Idaho concluded that the Commission's parole and probation functions, as were those of the Board of Corrections before it, were exempt from the appeal provision of former law. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

Application.

The 30-day filing deadline in former law applied to the period of time allowed for filing a petition for judicial review in district court after a final decision of the administrative agency and did not apply to limit the time within which to request a hearing before the board of county commissioners. University of Utah Hosp. v. Minidoka County, 120 Idaho 91, 813 P.2d 902 (1991).

Conclusions of Law.

The finding of county commissioners that proposed change in zone classification was in accordance with the intent and policy of the comprehensive plan was not a finding of fact, but rather a conclusion of law which if erroneous could be corrected on judicial review. Love v. Board of County Comm'rs, 105 Idaho 558, 671 P.2d 471 (1983).

Contested Case.

The Department of Employment was not required or entitled to appeal the findings and recommendations of the Commission of Human Rights, since a hearing before the Commission on a sex discrimination claim, held before the Commission was granted authority to issue orders, was not a "contested case." Hoppe v. Nichols, 100 Idaho 133, 594 P.2d 643 (1979).

Decision of Board of County Commissioners denying hospital its right to any notices required to be given under the Idaho Medical Indigency Statutes, including notice of denial or notice of partial denial for county medical aid was not reviewable since it did not involve a contested case. Idaho Falls Consol. Hosps. v. Board of County Comm'rs, 104 Idaho 628, 661 P.2d 1227 (1983).

Denial of Application for Medical Indigency Assistance.

Although the legislature clearly provided that a petition for judicial review to the district court must be filed within 30 days after an administrative agency's final decision, both the Administrative Procedure Act and the Medical Indigency Act made no provision as to the time within which a hospital, health care provider or applicant for assistance must request a hearing before the board of commis-

oners after its application for medical digency assistance had been denied. In the absence of a county ordinance adopting the guidelines, or any guidance or direction from the legislature as to the time within which a request for hearing must be made after denial of the application, the legislature did not intend to set a specific time limit within which a request for hearing must be made. University of Utah Hosp. v. Minidoka County, 120 Idaho 91, 813 P.2d 902 (1991).

Discharge of Employee.

Where the evidence in the record supported board of education's findings that campus security chief's conduct, which included use of racial slurs during conversations with reporter, evidenced traits of employment incompatibility and that it adversely affected the welfare of college, the board's conclusion that "good cause" existed to discharge him, was not arbitrary, capricious, or an abuse of discretion. Allen v. Lewis-Clark State College, 105 Idaho 447, 670 P.2d 854 (1983).

Discretion of Commission.

The fact that no harm came to the clients involved, and that restitution was subsequently made to the former broker did not le out suspension of a broker's license; and e the Real Estate Commission had the er to revoke the broker's license for violation of its regulations, a five-month suspension was not an abuse of discretion which would require reversal. Staff of Idaho Real Estate Comm'n v. Parkinson, 100 Idaho 96, 593 P.2d 1000 (1979).

The failure to include medical expenses in the determination of a budget deficit was not arbitrary and capricious. Hayman v. State, Dep't of Health & Welfare, 100 Idaho 710, 604 P.2d 724 (1979).

Erroneous Advice Provided by Agency.

Where applicants for zoning change made attempts to determine the status of their first application and were informed by the county that they would have to submit a new application, since a member of the public pursuing an action before an agency should not be penalized for following erroneous advice given by the agency and there was nothing in the record evidencing an intent by applicants to relinquish their rights under the first application for zoning change, they did not waive their right to appeal with respect to such application. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

ence.

hough evidence of the city council's prior approval of applications for rezoning by other developers was not in the original record of the city council hearing at which the council denied the plaintiff developer's rezoning application, the reviewing court could properly consider the evidence about the other applications since the information was of public record at the time of the plaintiff's hearing before the city council, the city council was certainly aware of its own previous actions in approving those other applications, and, in fact, the city council had stipulated that the facts concerning the other applications were true and correct. Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 655 P.2d 926 (1982).

In situations where no procedural irregularities before the administrative agency were alleged and the case heard as an administrative appeal, the hearing must be confined to the record; admitting additional evidence when procedural irregularities were not alleged in essence results in an impermissible trial de novo. Clow v. Board of County Comm'rs, 105 Idaho 714, 672 P.2d 1044 (1983).

Generally, a review is confined to the record unless there were alleged procedural irregularities before the agency and under those circumstances the statute stated that proof may be taken in the court; accordingly, where the issues in a particular action were limited and no procedural irregularities before the agency were alleged by the parties before or during the appeal hearing, the district court erred when it admitted additional evidence and entered findings of fact and conclusions of law, even if the parties had agreed to allow the court to hear additional evidence, since former law required that any additional evidence be presented before the agency. Clow v. Board of County Comm'rs, 105 Idaho 714, 672 P.2d 1044 (1983).

Where a developer appealed to the district court from an adverse decision by the county board of commissioners on his rezoning application, the district court did not err in refusing to allow the developer to augment the record before the district court with minutes of previous planning and zoning commission meetings, where the developer made no application to the court to present additional evidence as required by former law did not show why the evidence was not presented at the hearing before the county commissioners. Drake v. Craven, 105 Idaho 734, 672 P.2d 1064 (Ct. App. 1983).

Under former law, the district court erred in permitting additional evidence to be submitted on appeal; if the additional evidence was material and there was good reason for failure to present it at the proceeding before the board of commissioners, former law permitted the district court to order the taking of the additional evidence by the agency, which may then modify its findings and conclusions based upon the additional evidence. However, the district court could not hear the addi-

tional evidence for the first time on appeal and make its own findings of fact and conclusions of law. Daley v. Blaine County, 108 Idaho 614, 701 P.2d 234 (1985).

Where the applicants' property was the only property in the area which had not been rezoned, the board of county commissioner's decision to rezone the property as commercial, even though it was contrary to the existing comprehensive plan, was supported by substantial evidence and was not clearly erroneous. Ferguson v. Board of County Comm'rs, 110 Idaho 785, 718 P.2d 1223 (1986).

Where, in the hospital's appeal of the board of county commissioners' denial of funds for medical indigency, the transcript of the board's hearing contained an extended debate regarding the board's authority to limit the issues before it, and the hospital did not suggest what other evidence of irregularities would have been submitted, the hospital was not prejudiced by the district court's refusal to expand the record by entertaining the hospital's proffer of alleged irregularities in procedure. University of Utah Hosp. v. Board of County Comm'rs, 113 Idaho 441, 745 P.2d 1062 (Ct. App. 1987).

District court properly admitted extraneous evidence relevant to procedural deficiency in the process of determining whether action involving application for zoning change should be remanded for final determination on the merits where, after making initial application, applicants were informed by county that such application was voided by moratorium, the county conducted no hearings nor were there ever any findings of fact or conclusions of law entered with respect to the application, for in effect the suspension of the application by the county was a procedural irregularity. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Examination of Record.

Where the record on appeal indicated that a medically disabled plaintiff was afforded services, education and a rehabilitation plan as provided by law and that the plan was not completed by plaintiff although the Division of Vocational Rehabilitation did everything required of it, there was nothing in the record requiring reversal or modification of the division's decision denying him further vocational rehabilitation benefits as there were no constitutional or statutory provisions that were violated, the decision was not in excess of the division's or agency's authority, there were no unlawful procedures followed by the division; nothing in the record constituted error in view of the evidence submitted and the record considered as a whole. Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc., 117 Idaho 126, 785 P.2d 690 (Ct. App. 1990).

Exhaustion of Administrative Remedies.

State employees not able to appeal a grievance to the Personnel Commission had exhausted all administrative remedies available within the agency and were entitled to judicial review under the State Administrative Procedure Act. Sheets v. Idaho Dep't of Health & Welfare, 114 Idaho 111, 753 P.2d 1257 (1988).

In routine tax assessment complaints, the pursuit of statutory administrative remedies is a condition precedent to judicial review, however, the rule that administrative remedies must be exhausted before the district court will hear a case is a general rule and has been deviated from in some cases. Fairway Dev. Co. v. Bannock County, 119 Idaho 121, 804 P.2d 294 (1990).

The exceptions to the exhaustion of administrative remedies doctrine did not apply where the issue was the correctness of tax assessments. In such a case, the district court did not acquire subject matter jurisdiction until all the administrative remedies have been exhausted. Fairway Dev. Co. v. Bannock County, 119 Idaho 121, 804 P.2d 294 (1990).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and thus they were not final decisions and did not trigger the limitation period provided for in former law. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Findings.

Where an incorrect standard of proof was applied by the hearing officer in a hearing to determine eligibility for aid to dependent children, the district court erred in substituting its own findings and the case had to be remanded to an administrative hearing officer to resolve a conflict in the evidence. Tappen v. State, Dep't of Health & Welfare, 98 Idaho 576, 570 P.2d 28 (1977).

Judicial review of an administrative order is confined to the record under former law; accordingly, a district court improperly substituted its own findings of fact for those made by a hearing officer where the review of the district court was made on the record of the administative officer and the findings of the hearing officer were clear, concise, dispositive and supported by the evidence. Van Orden v. State, Dep't of Health & Welfare, 102 Idaho 663, 637 P.2d 1159 (1981).

If there were no findings of fact and conclu-